IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7998 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

KISHOR V CHHAG

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 7998 of 2001

MR DM THAKKAR for Petitioner No. 1

MR KT DAVE AGP for Respondents No. 1-3

MS PJ DAVAWALA for Respondent No. 4

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 08/11/2001

ORAL JUDGEMENT

1. In exercise of powers under Section 3 (2) of the Prevention of Black Marketing & Maintenance of Supplies of Essential Commodities Act, 1980 ('the PBM Act' for

short), District Magistrate, Junagadh vide order dated August 29, 2001, Annexure A to the petition, detained the petitioner detenu.

2. The averments made in the petition and the grounds of detention manifest that on August 25, 2001, the shop of the petitioner was inspected by Chief Supply Inspector and District Supply Officer, Junagadh. It is alleged that the stock of 920 litres of blue kerosene was illegally purchased for the purpose of selling unauthorisedly at a higher price, by the petitioner without possessing licence or permit. It is further alleged that the petitioner had indulged in black marketing activity for making profit by illegally and unauthorisedly purchasing and selling the stock of kerosene meant for distribution for card holders. The District Magistrate, Junagadh, therefore, vide the impugned order dated August 29, 2001 has detained the petitioner by exercising powers under section 3 (2) of the PBM Act.

3. By filing this petition under Article 226 of the Constitution, the petitioner has assailed the impugned order of detention on various grounds and prayed to issue a writ of habeas corpus or any other appropriate writ, order or direction quashing the impugned order of detention and setting him at liberty forthwith.

4. Though the petitioner has challenged the order of detention on various grounds, Mr. Thakkar, learned advocate for the petitioner has restricted his arguments to the effect that there is a delay on the part of the detaining authority in forwarding the representation dated September 15, 2001 made by the petitioner, to the State Government. According to him, the delay on the part of the detaining authority in forwarding the representation to the State Government vitiates the order of detention and the continued detention of the petitioner has become illegal and on this sole ground the order of detention is required to be quashed and set aside and the petitioner is required to be set at liberty forthwith.

5. To substantiate the aforesaid contention, he has invited the attention of this Court to the fact that the representation dated September 15, 2001 made by the petitioner to the detaining authority was received by the detaining authority on September 19, 2001 and the same was received by the State Government on September 29, 2001. Therefore, there is a reason to believe that the detaining authority has not sent the same immediately to

the State Government. Had the detaining authority sent the representation immediately to the State Government, it would have definitely received the representation earlier than September 29, 2001 and no proper explanation is forthcoming from the affidavit in reply filed on behalf of the detaining authority in this regard. He therefore urged to allow the petition by setting the petitioner at liberty forthwith.

6. Mr. K.T. Dave, learned AGP has appeared on behalf of the respondent Nos.1 to 3 and opposed the petition by making oral submissions and also by filing affidavits in reply. He has produced the affidavit in reply sworn by Sunaina Tomar IAS, the detaining authority and also the affidavit in reply sworn by P.G. Vyas, Deputy Secretary to the Government of Gujarat, Food, Civil Supplies and Consumer Affairs Department, Sachivalaya, Gandhinagar. Mr. P.J. Davavala, learned counsel who appears for respondent No. 4 has filed affidavit in reply sworn by S.L. Meena, Under Secretary in the Department of Consumer Affairs, Ministry of Consumer Affairs, Food and Public Distribution, New Delhi. Mr. Dave, learned AGP, relying upon the affidavit in reply filed by the detaining authority contended that the representation dated September 15, 2001 was received by the office of the detaining authority on September 19, 2001 and detailed reply was given on September 20, 2001 without any delay and, therefore, there is reason to believe that the detaining authority has sent the said representation to the State Government on September 20, 2001 and, therefore, there is no delay on the part of the detaining authority in forwarding the representation to the State Government. He has shown the register maintained by the office of the detaining authority and tried to justify that the said representation was sent to the State Government on September 20, 2001. He therefore urged that the petitioner's contention with respect to delay in forwarding the representation to the State Government is not well-founded and prayed that the petition may be dismissed.

7. I have considered the submissions advanced by the learned advocates appearing for the parties. I have also perused the averments made in the petition as well as the documents annexed therewith and the impugned order.

8. On having perusal of the record, it is clear that there is no dispute with respect to the fact that the petitioner had made representation on September 15, 2001 to the detaining authority. There is also no dispute

that the detaining authority has received the same on September 19, 2001. There is also no controversy about the fact that the State Government has received the said representation on September 29, 2001. Therefore the question would be whether it was the postal delay that was responsible for reaching the said representation to the State Government after ten days. On having perusal of the averments made in para 8 of the affidavit in reply filed by the detaining authority it is seen that the said representation dated September 15, 2001 was received by the office of the detaining authority on September 19, 2001 and detailed reply was given to the petitioner on September 20, 2001 without any delay. The detaining authority is silent on the point as to whether the said representation was forwarded to the State Government on the same day or not. Therefore, there is no plausible explanation coming forward from the detaining authority as to whether the said representation was forwarded on September 20, 2001 or immediately thereafter. There is no dispute that on September 29, 2001 the State Government has received the said representation. Therefore, in the absence of any explanation in the affidavit in reply it is to be held that the detaining authority must have delayed the forwarding of the said representation to the State Government otherwise it would have reached the State Government much earlier.

9. On having perusal of the record of the case which has been supplied by the learned AGP during the course of his submission, it is seen that the detaining authority has sent the reply to the detenu on September 20, 2001 by registered Post A.D. Similarly, to the Central Government also the representation was forwarded by registered Post A.D. But it is not seen from the record that the detaining authority has sent the same to the State Government by registered Post A.D. Therefore, in the absence of plausible explanation I am of the opinion that there is considerable delay on the part of the detaining authority in forwarding the said representation to the State Government.

10. Similar question arose before the Supreme Court in the case of Navalshankar Ishwarlal Dave v. State of Gujarat, AIR 1994 SC 1496. In that case, the Supreme Court has held that the action of the State Government in keeping representation without being considered and disposed and awaiting decision of advisory Board is illegal. It is also held that consideration and rejection of representation after receipt of Board's decision illegal.

11. Similar view is expressed by this Court in the case of Urmilaben Navnitlal Gandhi v. The Commissioner of Police, Surat City, 1994 (2) GLH (UJ) 10. In the said case Division Bench of this court referred to the judgement in Navalshankar Ishwarlal Dave's case (supra). In that case there was a delay of five days in forwarding the said representation and this Court observed that the office of the detaining authority was not alive to the urgency of forwarding the representation to the State Government for its consideration on merits. The detaining authority has not explained the delay in any manner except that Shri Shelat has urged that one holiday intervened. In that case it was held that the order of detention is vitiated on account of delay on the part of the detaining authority in forwarding the representation to the State Government.

12. In the case of Harish Pahwa v. State of U.P. AIR 1981 SC 1126, the Supreme Court has observed that representation made by the detenu must be considered immediately and delay invalidates the detention.

13. Applying the principles laid down by the Supreme Court and this Court to the facts of the present case, at the cost of repetition, be it stated that the representation dated September 15, 2001 which was sent by the petitioner to the detaining authority was received by the detaining authority on September 19, 2001. Though it is claimed by the detaining authority that it was forwarded to the State Government on September 20, 2001, why it was received by the State Government after ten days is not explained. The detaining authority has tried to justify that it has replied to the detenu on September 20, 2001 and on the same day it had forwarded the representation to the State Government but on having perusal of the record, I am of the opinion that the explanation tendered in the affidavit in reply is not swallowable and it is to be held that there is abnormal delay on the part of the detaining authority in forwarding the representation to the State Government. On this sole ground continued detention of the petitioner is required to be held illegal and the petition is required to be allowed.

14. For the foregoing reasons, the petition succeeds and accordingly it is allowed. The impugned order of detention passed against the petitioner - detenu is hereby quashed and set aside. The detenu is ordered to be set at liberty forthwith if not required in connection with any other case. Rule is made absolute. No order as to costs. Direct service is permitted.

(A. M. Kapadia, J.)